

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

UNITED STATES OF AMERICA

vs.

RUDOLPH W. UNDERWOOD

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No. 4:98CR00154 SWW

**Order**

Before the Court is petitioner's motion for relief pursuant to 28 U.S.C. § 2255 to which the government responded. The Court finds the motion should be denied.

On June 27, 2006, the Court revoked defendant's supervised release and committed him to the Bureau of Prisons to serve a term of six months imprisonment. Defendant surrendered to the Bureau of Prisons on August 21, 2006. He states he was released on February 16, 2007.<sup>1</sup>

Rule 1 of the Federal Rules Governing Section 2255 Proceedings for the United States District Courts provides that "a person in custody" may file a motion pursuant to 28 U.S.C. § 2255. Relief under 28 U.S.C. § 2255 is limited to persons in federal custody. *See Loar v. United States*, 434 F.2d 254, 255 (8th Cir.1970)(motion attacking sentence may be considered only if appellant is still in custody). Defendant makes no allegation he is in custody. *Cf. United States v. Queen*, 90 Fed.Appx. 197, No. 03-2796, 2004 WL 583640, at \*1 (8<sup>th</sup> Cir. March 25, 2004)(per curiam)(person

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<sup>1</sup> *See* § 2255 Mot. at ¶ 12(a).

serving term of supervised release is “in custody” for purposes of § 2255). Because petitioner is not in custody, his motion brought pursuant to 28 U.S.C. § 2255 should be denied.

IT IS THEREFORE ORDERED that the motion to vacate, set aside or correct sentence under 28 U.S.C. § 2255 [docket entry 149] is denied. The motion to recuse [docket entry 150] is denied as meritless, and the motion to compel [docket entry 145] and motion for extension of time [docket entry 147] are denied as moot.

DATED this 19<sup>th</sup> day of July 2007.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE